Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

FRED A. WHITAKER

PETITIONER

V

CALIFORNIA SUPREME COURT
RESPONDENT

ANDRONICO'S MARKET & GRAZALI'S SUPERMARKET CORPORATION

REAL PARTY IN INTEREST

ON PETITION FOR WRIT OF CERTIORARI
TO THE JUDGMENT OF CALIFORNIA'S SUPREME COURT
RULING OF SEPTEMBER 13 AND NOVEMBER 1, 2006

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

[1] All Litigants [Including Petitioners] have a Constitutional Right To Proceed In Forma Pauperis In **Judicial Proceedings** [Civil, Family Law,LandLord-Tenant, Probate Criminal Law and Civil and Criminal Appeals] – Before **Respondents [** Judge Roesch and Other Court Judges] **During The Relevant Time Period** [Presently and From 1975 -1975 to Present] Therefore **Respondents** Who Failed To Consider And or Enforce Petitioner's Right To Proceed In Forma Pauperis In **Security Bonding Statutes [** including **CCP 391]** Violated Petitioner's **Federal Constitutional Rights** Under The **1st, and 14th amendment** and **California's Constitution Article 1 Section 1 and 7.**

[2] All Litigants Under The **Federal** and **State** Constitutions Have a Legal Right To Resolve Their Property Right Disputes On Their Merits As Public Policy **During The Relevant Time Period.** Therefore **Respondents** Failure To Consider and Or Enforce Petitioner's Property Rights in a Hearing On The Merits In **Security Bonding Statutes** Violated Petitioner's Among Others **Access To Judicial Process; Equal**

Protection and Due Process Under 1st and 14th **Federal Constitution** and **California's Constitution** Article 1 Section 1; Section Number Seven

[3] All Litigants Have a Constitutional Right Not to Have Their Property Rights **Illegally Taken** [Mandatory Monetary Costs and Potential Costs or Dismissed Without a Hearing On Their Merits] Under Security Bonding Procedures **During The Relevant Time Period.** Therefore **RESPONDENTS** who Engaged In aforemention Judicial Procedures Violated Petitioner's Under The **Federal Constitution 1st and 14th amendments and California's Constitution Article 1 Section 1 and Seven.**

[4] All litigants Have a Constitution Right to A Fair and Impartial **Judicial Proceedings [** Civil Litigation;Probate; Family Law and Landlord Tenant – Therefore **Respondents** Who engaged In A Policy/Practice To Exclude All Stare Decisis Ruling That Made No Specific reference To **CCP 391** Violated This Court Principle Established In **Elder V Holloway** Which Violated Petitioner's **1st and 14th Federal**

Constitutional Rights And California's Constitutional Rights Under Article 1 Section 1 and Seven.

[5] All Litigants Have A Constitutional Right To A Fair & Impartial **Judicial Proceedings** – Therefore **Respondents** Who **During The Relevant Time Period** Had a Policy/Practice To Only Consider And Enforce Sherpardized Process To The Statute **Before The Court** [CCP 391] in Security Bonding Procedures therefore excluding material and relevant Evidence/laws of Thereby **Violating All Litigants 1st and 14th Under The Federal Constitutional Protected Rights** And **California's Constitutional Rights Article 1 Section 1**

[6] All Litigants Have A Constitutional Right To A Fair and Impartial **Judicial Proceedings** – Therefore **During The Relevant Time Period Respondents** who engaged in A Policy/Practice To Have Fixed Beliefs That They Acted Upon In Making Their Determination of **All Litigants** Legal Rights Including **CCP 391** Hearing Without Communicating Those Fixed Beliefs To **All Litigants** Denied **All Litigants** Knowledge and An Opportunity To Respond Prior To Court's

Final Determination of Our Legal Rights Violated Our **1st and 14th Federal Constitutional Rights And California's Constutional Rights Article 1 Section 1 and 7.** .

[7] Respondents **During The Relevant time Period** Had a Policy/Practice Towards **All Litigants** That it Had no Legal Obligation To Communicate The factual And or Legal Basis nor provide **all litigants** with an opportunity to respond to **Respondents'** Fixed Beliefs in determining **All Litigants' Legal Rights** that **Respondents** acted upon without **All Litigants** knowledge Constituted Excess Legal jurisdiction Thereby Violating **All litigants' 1st and 14th Federal Constitutional Rights and California's Constitutional Rights Under Article 1 Section 1 and 7.**

PARTIES TO THE PROCEEDINGS BELOW

The Caption on the Cover of this Writ identifies the parties to the proceedings.

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SUMMARY

This Court Power Is Needed To Restore The Integrity of **Respondents'** Judicial Procedures as Associated With Security Bonding Statutes Especially **CCP 391** and Similar Judicial Procedures and Security Bonding Statutes Thru Out The United States As To Protect All Litigants 1st, 14th Amendments To The Federal Constitution and Similar State Constitution In The State California To Insure That All Litigants Are Entitled To Their Property Rights Which Include a Hearing On Their Merits Which Include an Objective Determination of One's Legal Rights and The Inclusion of All Relevant Stare Decisis Ruling That is Consistent With The Principle Established By The Elder V Holloway Ruling and All Litigants Right to Proceed In Forma Pauperis In All Security Bonding Proceedings **28-30**

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PETITION FOR WRIT OF CERTIORARI

Fred A. Whitaker for myself and all others similarly situated persons, respectfully petition for a writ of certiorari to review California's Supreme Court denial of My Petition For Review Of September 13, 2006 and November 1st, 2006.

NO OPINIONS NO STATEMENT OF TRIAL COURTS RULING EXIST

California's trial, Appellate Courts in their court orders never stated the factual and or the legal basis supporting their court order.

JURISDICTION STATEMENT

This Court has jurisdiction over this Petition for Certiorari pursuant to 28 U.S.C. 1651(a), 2241 or 2254. This is a petition for a writ of certiorari to review a denial by California Supreme Court's denial of my Petition For Review on September 13, 2006 and November 1st, 2006.

RELEVANT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The relevant constitutional, statutory, and regulatory provisions are reproduced in the **Index To Appendix Page 31**

PETITIONER SEEKS A WRIT OF PROHIBITION A WRIT OF MANDAMUS OR BOTH IN THE ALTERNATIVE

This Petition For Extraordinary Writ is Against The Following: **[1]** Petitioner's Trial Court's Law and Motion Department In General Including Judge Roesch among others in particular .**[2]** First District Court of Appeal Justices In General Including Acting Presiding Justice McGuiness in particular **[3]** California Supreme Court Justices.

Relief is not available in any Court because the aforementioned Judicial Bodies have Refused to Consider and or enforce Stare Stares Ruling Made By This Court pertaining To Security Bonding Judicial Procedures Such As:

- All litigants Right to **[a]** A Hearing on Merits,**[b]** To Not Have Their Property Rights' Taken By Mandatory Security Bonding Cost, Including Potential Cost Without a Hearing on The merits or be dismissed ,**[c]** To Proceed In Forma Pauperis or **[d]** The Hearing on The Merits Must be determined by an objective Legal

Standard Prima Facia and or No Reasonable Probability to prevail.

NATURE OF WRIT BEFORE THIS COURT

This Writ Is Brought For The Purpose To Restrain RESPONDENTS From engaging in Certain Judicial Procedures Associated With State Of California's Trial and Appellate Court's . These Judicial Procedures are Applicable To All Other States Regarding Security Bonding Process.

THIS WRIT IS TO RESTRAIN aforementioned **RESPONDENTS, DURING THE RELEVANT TIME PERIOD** [Presently and From 1975 to presently] from engaging in **JUDICIAL PROCESS** [Civil,Family,Probate Law] Regarding **Judicial Procedures** That **RESPONDENTS** Engage In **[1]** a Policy/Practice To Exclude All Stare Decisis Ruling That Made No Reference To **Statute (CCP 391)** Before The Court In Those Hearing **[2]** A Policy/Practice To Exclude All Stare Decisis Ruling That Make no Reference To **Statute** Before the Court in The Shepardize Process **[3]** Having Fixed Beliefs That They Rely On In Determining Petitioner and Others Legal

Rights Without Communicating Nature of Their Fixed Belief To Petitioner and Others Without Granting Us an Opportunity to Respond To Those Fixed Beliefs Prior To Their Final Determination In **CCP 391** Hearing **[4]** Having A Policy/Practice To Not Provide Petitioner Among Others Specific Facts And Law(s) It Has Relied Upon To Determine Petitioner among Others Legal Rights In General Including The Constitutionality of **CCP 391** , What Constitutes a Vexatious Litigant, No Reasonable Probability To Prevail and Reasonableness of Security Bonding Fees Including The Right To Proceed In Forma Pauperis.

This Writ Addresses **All Litigants** State and Federal Constitution Rights Under The 1st, and 14th amendment as associated in General and Those associated With Security Bonding Statutes In Particular (California's Security Bonding Statute **CCP 391**).

GROUNDS FOR GRANTING THIS WRIT

Respondents Engaged In Various Judicial Procedures Which Deviated From Established Principles Of Law Whereby Petitioners' Property Rights Were Illegally Taken Within A Judicial Process That Constitutes Judicial Bias Thereby Violating Petitioner's 1ST AND 14TH Amendment Rights In A Manner That Petitioner Was Denied An Opportunity To Be Heard And The Illegal Exclusion Of My Evidence Is Conducted By Respondents In A Systematic Method

The court in **Arnett V Kennedy 416 US 170; Mitchell V Grant 416 US 606** has determined that mandatory security bonding costs or automatic dismissal without a hearing on the merits constitutes a violation of A Litigant's Due Process Legal Rights. **CCP 391 has mandatory security bonding costs or automatic dismissal.**

This Court in **Board of Regents 408 V Roth 408; Perry V Singermann 408 US 593 Ruled** that a litigants Property Rights mandate a hearing on the merits. **A Litigants' Property Rights Under CCP 391.2 Mandates No Hearing on The merits.**

This Court in **Cohen V Beneficial Loan Corporations 337 US 541, Burt V Irvine Co. 237 Cal.App.2d 828** have determined Security bonding costs must be reasonably determined by court. **RESPONDENTS had a fixed belief that**

CCP 391 has no determination of reasonableness of security bonding costs See Appendix Page 36 .

This Court In **Morgan V United States 304 US 1,26 Ruled** that all litigants have a constitutional protected right to knowledge of the factual and or legal basis that the trial court is relying upon with an opportunity to respond. **RESPONDENT** had a Fixed belief that the procedures in **Morgan V United States 304 US 1,26** does not apply in Security Bonding Statutes Including **CCP 391 See Appendix Page 37-38 & 40**

.

This court in **Elder V Holloway 510 US 344** determined that all courts have a duty to rule upon any legal issue being disposed of in light of all relevant precedent on the basis of not just those cited to or discovered by Appellate/trial courts.

RESPONDENTS' had a fixed belief that any Stare Decisis ruling that did not made a reference to a particular statute **(CCP 391)** that was before the court would not be considered nor enforced. **See Page 3.** Which **Respondents** stated was not Judicial Bias. **See Appendix Page 40**

Due Process And Equal Protection Mandate That Stare Decisis Process Be Done Right In The Determination Of A Litigants Legal Rights

Justice is the pursuit of the truth. Due Process mandates all litigants an opportunity to know of adverse evidence and to be heard concerning the truth, relevancy and significance. Otherwise such a hearing is a violation of the Concept of ordered liberty **See Palko V State of Conn. 302 US 319.**

A trial by a judge who is not fair or impartial constitutes "structural defect in the constitution of the trial mechanism and resulting judgement is reverisable per say **See Arizona V Fulminante 499 US 279; Gomez V United States 490 US 858; Gray V Mississippi 481 US 648; and Rose V Clark 478 US 570 Cited In People V Brown 24 Cal.Rptr2d 717.**

Supreme Court Justice Frankfurter in 1940 Stated " We recognize that Stare decisis [adherence to precedent] embodies an important social Policy. It represents an element of continuity in law and is rooted in the psychologic need to satisfy reasonable expectations. But Stare decisis is a principle of policy and not a mechanical formula of adherence to the latest decision, however recent and questionable, when such adherence involves collision with a prior doctrine more embracing in its scope, intrinsically sounder and verified by experience... This Court unlike the House of Lords, has from the beginning rejected a doctrine of disability at self-correction.

Loren P. Beth in The Constitution, Politics and the Supreme Court New York, Harper and Row 1962 stated The Rule of precedent creates predictability in the law as proclaimed by the Supreme Court, preserving stability and continuity. But the expectations to that rule the departures from the doctrine of stare decisis are one method the court adopts the constitution top new circumstances and new conditions.

Court In **People V Adams 125 Cal.Rptr. 525 Note 4. Ruled:** Stare Decisis doctrine requires the trial and the Court of Appeal to follow the holding of the Supreme Court absence such factual changes as to negate their applicability.

The United States Supreme Court in **Charles K. Elder V R.D. Holloway et al 510 US 344** established as a legal principle of law that the appellate/trial Courts have a duty of law to rule upon any legal issue being disposed of in light of all relevant precedents on the basis of not just those cited to or discovered by the Appellate/trial Court.

A latin phase " **Argumentum ab aucoriate est fortissum in lege** means an argument drawn from authority is the strongest in law. If the strongest argument is drawn from authority then the weakest is one that is drawn from no authority as Judge Roesch and Other Judges Engaged In.

A latin phrase " **Argumentum simili valet in lege** means argument by analogy (from a similar case) it is valid. Judge Roesch's and Other Court Judges Disregarding All **Stare Decisis Ruling** that have No Reference To **CCP 391** Conflicts With **Principle of Law** as established By This Court In **Elder V Holloway 510 US 344.**

A Latin Phrase " **Audi altreram partem** means hear the other side, No one should be condemned unheard. This is exactly what Judge Roesch and Other Judges Did When **[a]** Instituted their Policy To Exclude all Non Stare Decisis Ruling That Make No Reference To **CCP 391** and **[b]** Instituted a Policy that Their Fixed Beliefs would be Acted upon To Make Final Determinations of Petitioner's Legal Rights Without Our Knowledge and An Opportunity To Respond.

A Latin phrase " **A verbis non est recdendum**" means from the words of the law there is no departure. When Judge Roesch and Other Judges Instituted and Engaged in the aforementioned Policies stated in this Writ the result was to

make departure from the words of the law brought before them by Petitioner.

Petitioners During A 30 Year Time Period Pertaining To Respondents' Judicial Procedures Referred To In This Writ Are Victims Of A Judicial Tragedy As Follows:

RESPONDENTS presently and from 1977 to present have engaged in Judicial procedures that have produced inconsistency in the application of the law; applying the law in an equal manner despite the fact that Different security bonding had the same judicial procedures [mandatory security bonding cost or be dismissed] were declared unconstitutional in 1975 to 1977 while **CCP 391** has not been declared unconstitutional.

This Judicial tragedy started in 1965 when **CCP 391** was declared in 1965 Constitutional on the basis of a Court Ruling In **Vinncombe V State of California 172 Cal.App.2d at 54**

The Judicial tragedy is that since 1975 to 1977 various Court ruling has determined mandatory security bonding that consist of taking one's monetary property or be dismissed was declared unconstitutional as to Government Code 941, 951,

12012 and Civil Code 830 yet 30 years later **CCP 391** which has mandatory security bonding that consist of taking of one's monetary property or be dismissed has not been declared unconstitutional during the last 30 year period.

BACKGROUND FACTS

Petitioner Stated That He Was Not a Vexatious Litigant Under California Security Bonding State **CCP 391** In Trial Court. Petitioner Alleged That I had Less than 5 Adverse ruling within 7 Years as required By **CCP 391(B)(1).**

Trial Court In Determining That Petitioner was a Vexatious Litigant Relied On Previous Court Ruling in 1992, 1995 and April 5th, 2005 That I was a Vexatious Litigant.

NUMEROUS MATERIAL STARE DECISIS RULING RESPONDENTS' FAILED TO CONSIDER AND OR ENFORCE IN SECURITY BONDING STATUTE (CCP 391)

Trial Court Refused To Consider and or Enforce Petitioner's Right To **[a]** Proceed In Forma Pauperis **[b]** Hearing On The Merits **[c]** Prima Facie Standard of Review **[d]** Not To Pay Mandatory Security Bonding Costs Including potential Costs or Be Dismissed **[e]** Provide Specific Knowledge of the factual

and or Legal basis The Trial Court Had Relied Upon **[f]** Have Stare Decisis Court Ruling That Made No Specific reference To **CCP 391 [g]** Reasonableness of Security Bonding Costs and Potential Costs

Petitioner Made Trial Aware That It's Policy/Practice To Have Fixed Beliefs that it Relied Upon To Make Final Determinations Pertaining To My Legal Rights Without Communicating That Fact To Petitioner Constituted Judicial Bias.

LEGAL ARGUMENT

LEGAL ARGUMENT#1: RESPONDENTS Who Failed To Consider All Litigants Including Petitioner Legal Right To Reasonable Security Bonding Costs ,Potential Costs Including A Right To Proceed In Forma Pauperis During The Relevant Time Period In CCP 391 Hearing Violated Our **State And Federal** constitutional Rights.

RESPONDENTS Had a Fixed Belief That Once The Court Has Found That Plaintiff Is A Vexatious Litigant, The vexatious litigant statutes do not require a hearing and evidence as to the amount of the undertaking that Plaintiff will be required to provide as security Citing **McColm V WestWood Park Ass'n 1998 62 Cal. App.4th 1211 See Appendix Page 36**

Court Ruling In **Martin V Superior Court 176 Cal. 289; Ferguson V Keays 4 Cal.3rd 649; Majors V Superior Court 181 Cal. 270; Conover V Hall 11 C3rd 851 And County of Sutter Cal.App.2d 770; GonZales V Fox Cal.App.3rd Supp. At 17 and Rhodes V Superior Court 90 Cal.App.3rd at 488-489 Ruled That** Petitioner among others have a Constitutional Right To Proceed In Forma Pauperis Which included Reasonableness of Expenses.

VARIOUS COURT RULING RESPONENTS WERE MADE AWARE THAT REASONABLE ATTORNEY COSTS, POTENTIAL COSTS WERE APPLICABLE TO CCP 391 HEARING

The Court in **Burt V Irvine Co. 237 Cal.App.2d 828** made a reference to 834 of the Corporations Code . **Section 834 of Corporations Code states that mandatory provisions for notice, an evidentiary hearing and finding such issues as the merit of plaintiff's action and the reasonableness of the expenses likely to be incurred by the defendant cited in Beadreau V Superior Court of LA 121 Cal.Rptr. 595** Thus as a matter of law under **CCP 391** I have a right to a hearing on the merits. This was supported by **Board of Regents V Roth 408 US at 564 and Perry V Singermann 408 US 593.**

The Court in **Beyerbach V Juno Oil Co. 42 C2d at 13 Note 10 Stated** US Const. Amendment V ; California Const. Art. 1 # 13 since it is **only reasonable expenses in an amount to be determined by Court** on Notice and hearing which plaintiff may be required to secure.

The Court in **Taliaferro V Hoogs (1965) 236 CA2d at 529** stated that In Considering whether statute offends Due Process Clause we can judge only by its own terms, for it has had no interpretation or application yet. It imposes liability **and requires security for the reasonable expenses including counsel fees which may be incurred by the corporation.**

RELEVANT STATUE ON ALL LITIGANTS RIGHT TO PROCEED IN INFORMA PAUIPERIS PERTAINING TO ALL SECURITY BONDING STATUTES

The Court In **Bolden V City of Shreveport LA.App. 278 So. 139** addessed a security bonding statute that mandated security bonding amount of $ 5,000 within 30 days under penalty of dismissal if not paid. Plaintiff raised constitutional right to proceed in forma pauperis.

The Court in **Bolden V City of Shreveport LA.App. 278 So. Supra at Ruled that** The jurisdiction of the United States Supreme Court is to the effect that Due process requires , as a minimum and in the absence of a countervailing state interest of overriding significance, that persons forced to settle their claims through judicial processes must be given a meaningful opportunity to be heard **Bodie V Connecticut 401 U.S. 371, 91 S. CT. 780, 785-786.**

Thus within the limits of practicality a state must afford to all individuals a meaningful opportunity to be heard. The right must be protected against denial by particular laws that operate to jeopardize its use by certain individuals. As a general proposition, a statute or a rule may be constitutionally invalid as applied when it operates to deprive an individual of a protected right, although its general validity as a measure enacted in the legitimate exercise of state power is beyond question.

However, it is inconceivable, that because of plaintiff's poverty that they could ever furnish the security, that they have been ordered to provide. The order is tantamount to a complete denial of their access to judicial process for the

determination of the validity* of their claim. Balanced against the state's policy of discouraging the institution of actions against its officers, plaintiffs are denied access to the courts and to the right of due process for a judicial determination of their claim because of their inability to post bond as herein required. This is an effective denial of the rights of due process and equal protection.

As observed by Justice Brennan in a concurring opinion in Boddie V Connecticut opinion in Boddie V Connecticut **supra 401 U.S. 387).**

When a states interest in opposing a fee require on all indigent is compared to the indigent's interest in being heard, it is clear that the latter is weightier. It is an unjustified denial of a hearing and therefore a denial of due process to close the courts to an indigent on the ground of nonpayment of a fee.

Courts are the central dispute-settling institutions in our society. They are bound to do equal justice under law to rich and poor alike. They fail to perform their function in accordance with Equal Protection Clause if they shut their doors to indigent plaintiffs altogether... A state may not make its judicial processes available to some but deny them to others simply because they cannot pay a fee. **Harper V Virginia State Board Of Elections 383 US 663, 86 S. Ct. 1079.**

The right to be heard, in some way at some time extends to all proceedings entertained by the court. Denial of this right a prerequisite to justice , to this indigent plaintiff because of their inability to furnish a bond to secure payment of the defendant officer's attorney fees violates the privileges guaranteed all litigants under due process clauses of both state and federal constitutions. Moreover the state statute, in the instant case and as interpreted and applied to plaintiffs in the trial court is clearly repugnant to the guarantees to our courts and to the principles of equal protection under law. **Thus we hold that the requirement that plaintiff an indigent furnish security**

for the payment of the defendant officers attorney fees is null, void and without effect.

RESPONDENTS HAD FIXED BELIEF THAT [1] PETITIONER AMONG OTHERS HAD NO RIGHT TO A HEARING AND CONSIDERATION OF REASONABLE SECURITY BONDING COSTS INCLUDING A RIGHT TO PROCEED IN FORMA PAUPERIS VIOLATED PETITIONER'S 1ST AND 14TH FEDERAL AND SIMILAR STATE OF CALIFORNIA'S CONSTITUTIONAL RIGHTS

RESPONDENTS Failure to consider and Enforce Petitioner's Right To have Reasonable Security Bonding Costs including Potential Costs **See Appendix Page 36** and a Right To Proceed In Forma Pauperis In **CCP 391** Ruling Constituted A Violation of Petitioner's **State** and **Federal** Constitutional Rights.

LEGAL ARGUMENT#2: RESPONDENTS Policy/Practice To Exclude All Petitioners Stare Decisis Ruling That Made No Reference To **CCP 391** Violated Petitioners' **State** And **Federal** Constitutional Rights

PETITIONER RAISED BEFORE RESPONDENTS DURING THE RELEVANT TIME PERIOD VARIOUS RELEVANT CONSTITUTIONAL STARE DECISIS COURT RULING THAT WERE APPLICABLE TO CCP 391 BY SUBJECT MATTER WHICH RESPONDENTS FAILED TO CONSIDER AND OR ENFORCE

- Security Bonding Statutes in General Constitute a taking of one's property rights – **Arnett V kennedy 416 US 170; Mitchell V Grant 416 US 606 Cited In Beadreau V Superior Court of LA 14 Cal.3rd 457**

- A litigant's Property right under The Due Process clause cannot be taken without a hearing on the merits **Board of Regents V Roth 408 US at 564; Perry V Singermann 408 US 593, 601 Cited In Beaudreau V Superior Court of LA 595**
- A hearing on the merits includes a finding on the merits and the reasonableness of the expenses likely to be incurred by defendant – **Cohen V Beneficial Loan Corporations 337 US 541 as Cited In Beaudreau V Superior Court of LA 121 Cal. Rptr at 595; Burt V Irvine Co. 237 Cal.App.2d 828**

- All Litigants have a constitutionally protected Due Process right to knowledge of the factual and or legal basis that the trial court is relying on and an opportunity to respond prior to it's final ruling – **Morgan V US at 1,26; Moore V California Minerals 115 CA2d at 834**

- The legal standard of a hearing on the merits is a Prima Facie standard of law **North Georgia Finishing Inc. V Di-Chem Inc. supra US 601**

- No Reasonable Probability to prevail legal standard is –That each cause of action is foreclosed as a matter of law **Deveraux V Latham & Watkins 32 Cal.App.4th 1571**

- Court Has Ruled That Security Bonding Statutes That Have Mandatory Monetary Security Costs or Be Dismissed Was a Violation Of **State** And **Federal** Constitutional Rights **See Allen V Jandos 125 Cal Rptr at 33** The Court in **Allen V Jordanos 125 Cal. Rptr. At 3.** ruled upon the legal issue that the requirement of CCP 830 in effect deprives a plaintiff of

property at least temporary prior to a hearing and therefore violates the due process and equal protection clauses of the constitution... as follows: The **Beaudreau** decision related to Government Code 947 and 951 which required the filing of an undertaking by plaintiff in an action against a public entity or public employee. The court concluded that statutes which fail to make express provisions for a meaningful hearing prior to imposition of such obligation are unconstitutionally violate of plaintiff's due process rights under the fifth and fourteenth amendments to the united states Constitution article 1 section sections 7 and 15.

Code of Civil Procedure Section 830 Which is involved In the case at bench imposes upon plaintiff a mandatory and unequivocal requirement of a $ 500 undertaking. The Court has no discretion but an Action brought without filing the requirement undertaking shall be dismissed.

Under The compulsion of the California Supreme Court's decision in **Beaudreau** we hold that the code of Civil Procedure 830 is subsumed and rendered unconstitutional by the criteria enunciated in that decision.

Code of Civil Procedure Section 830 830 which is involved in the case at bench, imposes upon plaintiff a mandatory and unequivocal requirement of a $ 500 undertaking. The Court has no discretion but an action brought without filing the required undertaking shall be dismissed.

Under the compulsion of the California Supreme Court's decision in **Beaudreau** we hold that the Code of Civil Procedure 830 is subsumed and rendered unconstitutional by the criteria enunciated in that decision.

- Government Code 941, 951 and Civil Code 830 all had the same procedures - a litigant who fails to pay a mandatory security bonding amount without a hearing on the merits of their claim must have their claim dismissed

- The Court in **Beaudreau V Superior Court 121 Cal.Rptr at 585** stated as a principle of law security bonding statutes Government Code 947 and 951 which required an amount security bonding without a hearing on the merits and not the necessity of the reasonableness of the security bonding was unconstitutional.

RHODES V SUPERIOR COURT 90 CAL.APP.3RD 486-487 IS CASE ON POINT OF THE ILLEGAL DEFICIENCIES OF STATUTORY PROCEDURES OF CCP 391 WHICH RESPONDENTS FAILED TO CONSIDER AND OR ENFORCE

- The Court in **Rhodes V Superior Court** 90 Cal.App.3rd at 486-487 Rule s Follows: Government Code section 91012 provides: The Court may award to a plaintiff or defendant other than an agency, who prevails any action authorized by this title his costs of litigation, including reasonable attorney fees. On motion of any party a court shall require a private plaintiff to post bond in a reasonable amount at any stage of the litigation to guarantee payment of costs.

  As we aforestated, the trial refused a request made under this section "On the authority of **Beaudreau V Superior Court 14 Cal.3rd 448 In Beaudreau** the court addressed the validity of two other bond requirements in The Government Code Section 941... that demanded plaintiff to post a Bond...Section 951 contained similar provisions... The Court ruled that the undertaking requirements of those sections constitute a taking of

property without due process of law in violation of federal and state constitutions (**14 Cal.3rd at p 465**).

The **Beaudreau** Court concluded that property was taken by either by filing the bond or by dismissal of the lawsuit. Although noting that the statutes were enacted for the proper purposes of protecting public entities and employees against unmeritorious and frivolus litigation, it concluded that the statutes did not effectuate that purpose they did not distinguish between the classes of plaintiffs on the basis of the merit of the actions brought by them.

The primary deficiency in the statutes in **Beaureau** was that they did not Provide for a hearing at which the court could inquire into "The merit of plaintiff's action as well into the reasonableness of the amount of the undertaking in the light of defendant's probable expenses **(14 Cal.3rd at p. 460)** [1] Additional defects noted by the court were that absence proof of indigency, the court is given no discretion to dispense with the undertaking requirement if demanded by a qualifying defendant regardless of the merit of plaintiff's lawsuit. Furthermore, the legislation specifies no standards for determining the reasonable amount of such undertaking. If the defendant is satisfied to limit its demand to the statutory minimum, judicial approveral is not required.

Stare Decisis Ruling from United States Supreme Court in **Boddie V Connecticut Supra 401 US 397 and California Supreme Court and its Court of Appeal** has Ruled Under State and Federal

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[1] Though the statutes also failed to provide for the plaintiff to make a showing of indigency which would justify relief from the undertaking requirements, the prior decisions in **Conover V Hall (1974) 11 Cal.3rd 842, 850-853 [114 Cal. Rptr. 642, 523 P.2d 682]** and **County of Sutter V Superior Court (1966) 244 Cal.App.2d 770 [53 Cal.Rptr. 424]**, had remedied that deficiency by finding a common law created power to waive security for costs in the case of an indigent.

Constitutions In Forma Pauperis Exists Including Common Law Legal Right. This includes a waiver of security Bonding Costs.

PETITIONER'S AFOREMENTIONED STARE DECISIS COURT RULING ADDRESSED MATERIAL LEGAL ISSUES RELEVANT TO THE UNCONSTITUTIONALITY OF CCP 391 THAT WERE NEVER CONSIDERED NOR ENFORCED BY JUDGE ROESCH AND OTHER RESPONDENTS

Petitioner Stare Decisis Ruling have raised my right and **All Other Litigants State** and **Federal** Constitutions of **[a]** Right To a Hearing on the Merits **[b]** Right In The Taking of My Property based on Reasonable Security Bonding Costs including Potential Cost and a Right To Proceed in forma Pauperis **[c]** Right To Have Hearing on merits Standard of Review Prima Facie or No Reasonable Probability Based on Objective Legal determinations [such as demurrer, summary judgment, default or Judgment on the Pleading].

As a Result of Judge Roesch and Other Court Judges Practice/Policy material relevant Stare Decisis Ruling were excluded from their Consideration in **CCP 391 Hearing.**

Constituted an Violation of My State And Federal Constitutions.

STARE DECISIS RULING THAT CONFLICT WITH THE PROCEDURES IN CCP 391 THAT RESPONDENTS SYSTEMATICALLY EXCLUDED FROM CONSIDERATION AND OR ENFORCEMENT IN CCP 391 SECURITY BONDING HEARING

CCP 391.2 Mandates no hearing on the merits. This Conflicts with Stare Decisis Ruling Cited in this section.

CCP 391.3 Mandates Reasonable Probability. Case Law **Devereaux V Latham & Watkins 32 Cal.App.4th 1571 Ruled** That by law means that each and every one of Plaintiff's causes of actions must be foreclosed as a matter in law.

Judge Ford in May of 2005 under **CCP 391.3** Ruled **Appendix Pages 42-49** Defendant must show either the plaintiff's recovery is foreclosed as a matter of law or that there are insufficient facts to support recovery by the plaintiff on Plaintiff's Legal theories. **See Deveraux V Lathan & Watkins 32 Cal.App.4th 1571...** Defendant has shown that Plaintiff has not made a showing as to the third causes of actions that no reasonable probability to prevail exists. **Therefore Defendant**

has not made the showing for the Court to order Plaintiff to furnish security under Code of Civil Procedure 391.1. See Appendix Pages 43,45,47 & 49 .

Petitioner raised that Prima facie is legal standard of review in security bonding statutes **See** United States Supreme Court ruling In **North Georgia Finishing Inc. V Di-Chem Inc. supra 419 US 601 Ruled That** in instances of security bonding statutes whereby one litigant is able to take the property of another. **The United States Constitution mandates under Due Process that Prima Facie is Legal standard of Prima Facie on issues of lack of merit and potential costs.**

The United States Supreme Court In **Cohen V Beneficial Industrial Loan Corporations 337 US 541 Ruled That** in section 834 Corporations Code mandatory provisions for notice an evidentiary hearing and finding such issues as the merit of plaintiff's action and the reasonableness of the expenses likely to be incurred by the defendant as cited in **Beaudreau V Superior Court of LA 121 Cal.Rptr. at 595.**

California's Court of Appeal in **Muller V Tanner 2 CA3rd at 464 Ruled that** The General Rule applicable To a

Proceedings of this nature and the cases applying them were set forth by this Court in **Burt V Irvine Co. 237 Cal.App.2d 828** as follows under the provisions of section 834 of the Corporations Code.

SECURITY BONDING STATUTES CCP 391 LACK OF MERIT CONFLICTS WITH PRINCIPLE THIS COURT HAS ESTABLISHED IN BOARD OF REGENTS V ROTH 408 US AT 564 – LITIGANTS RIGHT TO VALIDATE THEIR LEGAL CLAIM ON THEIR MERITS

RESPONDENTS Practice/Policy cited in this section material relevant Stare Decisis Ruling and Material and Relevant Conflicting Stare Decisis Ruling were excluded from their Consideration in **CCP 391 Hearing Constituted an Violation of My State And Federal Constitutions.**

LEGAL ARGUMENT#3: RESPONDENTS During The Relevant Time Period Had A Policy/Practice To Have Fixed Beliefs That They Acted Upon In Making Their Final Ruling Without Communicating Those Fixed Beliefs To Petitioner Constituted A Violation of Petitioner's **State** And **Federal** Constitutional Legal Rights.

Judge Roesch in his Written Response To My Motion To Disqualify Him **See Appendix Pages 34 That [1]** The

Aliegation that he did not provide plaintiff with specific facts supporting court's ruling such as Court's determination that Plaintiff is a vexatious litigant; that he failed to follow stare decisis and or otherwise made legally improper ruling and that Petitioner was denied an opportunity to respond to the factual or legal basis relied on by the court in its ruling to the factual or legal basis relied on by the court in its ruling – **none of these complaints constitute a factual allegation that if true would raise a reasonable doubt to his impartiality . [2]** Once the court has found that plaintiff is vexatious litigant, the vexatious litigant statute do not require a hearing and evidence as to the amount of undertaking that Plaintiff will be required to provide as security citing **Mccolm V Westwood Park Ass'n 62 Cal.App.4th 1211. [3]** Although Plaintiff has not indicated the dates of the tentative ruling [Judge Ford Ruling **Appendix Page 36]** in question, it appears that Plaintiff is referring to tentative ruling were not adopted as orders of the Court. Such tentative ruling have no legal effect. One Trial Judge is not bound by another Trial Judge Ruling in separate proceedings. **[4]** Due Process does not require the Court To

engage in Colloquy regarding the Court's reasoning **[5]** In this proceedings and in any other proceedings in which plaintiff has appeared before me, I have given plaintiff ample opportunity to present the merits of the matter before the court at the time. To the extent I have ever limited plaintiff during oral argument it was because I had already fully considered his arguments on the subject and determined them to be lacking in merit because plaintiff sought to address matters not before the court.

Judge Roesch at The October 20th, 2006 Hearing Stated That It was his Policy/Practice to exclude all Stare Decisis Ruling That Have No Reference To **CCP 391** in **CCP 391 Security Bonding Hearing.**

The United States Supreme Court Ruling In **Morgan V United States 304 US 1,26** and California Supreme Court in **Moore V California Minerals 115 CA2d at 834** that All litigants have a constitutional protected Due Process Right To Knowledge of the Factual and or legal basis that the trial court is relying upon to allow litigants to respond to prior to its final ruling.

RESPONDENTS Fixed Beliefs is not just the beliefs themselves. It is the fact that The Court fixed beliefs such as **[a]** Once the Court has found that Plaintiff is a vexatious litigant, the vexatious litigant statutes did not require a hearing and evidence as the amount of the undertaking that plaintiff will be required to provide as security **[2]** This Court's determination that Plaintiff is a vexatious litigant is based on other judges previous ruling which have not been overturn **Appendix Page 35-36 [3]** one trial Judge is not bound by another trial Judge's ruling in separate proceedings **[4]** To the extent I have every limited plaintiff during oral argument it was because I had already fully considered his arguments on the subject and determined them to be lacking in merit or because plaintiff sought to address matters not before the court **Were keep secret from Petitioner and they affected material factual and legal issues before the Court Which the court acted in without providing petitioner an opportunity to respond to Court's Fixed belief.**

Judge Roesch's Among Other Court Judges Policy/Practice To Exclude Stare Decisis Ruling That Made no reference To

CCP 391 along with its belief that vexatious litigants statutes did not require a hearing and evidence as to amount of undertaking was bias.

Given that Petitioner raised Stare decisis Ruling on my right to a hearing on reasonableness of security bonding costs , including a right to proceed in forma pauperis raises Judicial bias in that relevant stare decisis ruling on that subject matter was or could have been excluded by Judge Roesch's Policy/Practice cited in this writ. Thus Inherient Judicial Bias existed in the matter that relevant stare decisis ruling were excluded by Judge Roesch and other Court Judges

On the other Hand Judge Roesch has stated he had restricted Petitioner's oral argument on the basis that it was his belief that he had already determined my argument to lack merit and therefore limited my oral argument.

The problem is that the court has made a determination that it's determination is the correct one without allowing Petitioner knowledge of the actual factual and or legal basis of it's belief and an opportunity for Petitioner to respond. **It is the Courts' ability to exclude from hearing any presentations it has**

deemed lacking in merit without going thru Judicial Procedures Such as Evidence Code 352 in the exclusion of evidence. In essence the court has engaged in censorship, restriction of ideas and the illegal exclusion of evidence. THIS IS WHAT CREATED THE JUDICIAL BIAS. PETITIONER WAS DENIED KNOWLEDGE OF THE FACTUAL LEGAL BASIS OF COURTS FIXED BELIEF PRIOR TO IT ACTING ON ITS OWN FIXED BELIEFS. THIS PROCESS WAS PARTIAL IN THAT PETITIONER WAS DENIED A FAIR HEARING.

SUMMARY

THIS COURT'S POWER IS NEEDED TO RESTORE THE INTEGRITY OF RESPONDENTS JUDICIAL PROCEDURES AS ASSOCIATED WITH SECURITY BONDING STATUTES ESPECIALLY CCP 391 AND SIMILAR JUDICIAL PROCEDURES AND SECURITY BONDING STATUTES IN OTHER STATES AS TO PROTECT ALL LITIGANTS 1ST AND 14TH AMENDMENTS TO INSURE THAT ALL LITIGANTS INCLUDING PETITIONER'S PROPERTY RIGHTS INCLUDE A RIGHT TO IN FORMA PAUPERIS; A HEARING ON THE MERITS BY AN OBJECTIVE LEGAL STANDARD AND THE INCLUSION OF ALL REVELVANT STARE DECISIS RULING UNDER THE PRINCIPLE ASSOCIATED WITH ELDER V HOLLOWAY

This Writ's purpose is to assist this court's awareness of Security Bonding Statutes and **RESPONDENTS'** Specific procedures that are applicable not only to the State of California but all fifty states which has an effect to deny Petitioners' fundamental Constitutional Rights of **[1] 1st Amendment Right** of Access To Judicial Proceedings by denying our Right To Proceed In Forma Pauperis **[2] and 14th Amendment Right** Of Due Process And a Right To A Fair Trial Where **RESPONDENTS'** engaged in Judicial Procedures of **[a]** Illegal Exclusion of Evidence **[b]** Judicial Bias **[c]** Violation of Principle of Stare Decisis **(Elder V Holloway 510 US 344) [d]** Reliance of facts not on court record **[e]** Illegal **Censorship** (Fixed Beliefs not Communicated To Petitioner by **Respondents** in making their Legal Determinations ...) by Failing To Comply with Principle of Morgan V United States 304 US 1,26

[3] Equal Protection Rights Under the 14th Amendment – Since 1975 to Present **CCP 391** Had Identical Security Bonding Procedures as California's Statutes Government Code 941, 951, 12012 and Civil Code of Procedure 830.

RESPONDENTS during 1975 to 1977 ruled that aforemention Security Bonding Statutes were Unconstitutional yet **CCP 391** since 1975 to present a period of 30 years has not been ruled Unconstitutional.

The analysis of **CCP 391** is important to show this court how major deviations from established Judicial Procedures have and can be **created, maintained and enforced by RESPONDENTS** over a 30 year period against In Pro Per litigants only.

Without this Court's assistance Petitioners' and Hundreds of Thousands to Millions of Individuals are exposed within the State of California and Outside the State of California to having our fundamental rights not being enforced.

RESPONDENTS Judicial Procedures stand for everything that is not consistent with what Our Constitution stands for; Secrecy, no hearing on the merits, no objective determination of one's legal rights. Censorship, Hearing before a Bias process

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

Fred A. Whitaker **No RG04181861**

Plaintiff **Order Striking Challenge For Cause To Judge Frank Roesch Filed October 16, 2006**

Vs

Andronico's Markets et al

Defendants

On October 16, 2006, Plaintiff Fred A. Whitaker ("Plaintiff") filed a Motion For disqualification (hereafter the "challenge) pursuant to Code Civ. Pro. 170.3, Having read and considered the challenge, the court hereby STRIKES it. The reasons Follow.

1. **No Legal Basis For Disqualification**

   First the challenge must be stricken because Plaintiff has failed to set forth a Legal basis for disqualifying judge Roesch. A challenge for cause must "set forth the facts constituting the grounds for disqualification of the judge ". (Section 170.3©(1).). A Judge shall be disqualified pursuant to 170.3(a)(6) if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. The standard for disqualification

1 unless otherwise specified, all statutory references are to the code of civil procedure

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Fred A. Whitaker **No RG04181864**

Plaintiff **Order Striking Challenge For Cause To Judge Frank Roesch Filed October 16, 2006**

Vs

Gateway Supermarkets et al

Defendants

On October 16, 2006, Plaintiff Fred A. Whitaker ("Plaintiff") filed a Motion For disqualification (hereafter the "challenge) pursuant to Code Civ. Pro. 170.3. Having read and considered the challenge, the court hereby STRIKES it. The reasons Follow.

2. **No Legal Basis For Disqualification**

First the challenge must be stricken because Plaintiff has failed to set forth a Legal basis for disqualifying judge Roesch. A challenge for cause must "set forth the facts constituting the grounds for disqualification of the judge ". (Section 170.3©(1).). A Judge shall be disqualified pursuant to 170.3(a)(6) if a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. The standard for disqualification

1 unless otherwise specified, all statutory references are to the code of civil procedure

Under 170.1. (a)(6) Is an objective one and a party's subjective belief as to a judge's bias and or prejudice are irrelevant and not controlling in a motion to disqualify for cause. (See United Farm Workers of America of America V Superior Court (1985) 170 Cal.App.3rd 97, 104; See also Leland Stanford University V Superior Court (1985) 173 Cal.App.3rd 403, 408.). Mere conclusions of the pleader are insufficient. (In re Morelli (1970) 11 Cal.App.3rd 819, 843; Urias V Harris Farms, Inc. (1999) 234 Cal.App.3rd 415, 426.) If a challenge for cause "on its face discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken. (Section 170.4(b).)

Here, the Challenge contains no factual allegations that, if untrue, might reasonably lead a person to doubt Judge Roesch's impartiality. The challenge contains three overall complaints about Judge Roesch: (1) that Judge Roesch did not provide Plaintiff with specific facts supporting the court's ruling, such as the Court's determination that plaintiff is a vexatious litigant; (2) that Judge Roesch failed to follow stare devises and or otherwise and or otherwise made legally improper ruling; and (3) that plaintiff was denied an opportunity to

respond to the factual or legal basis relied on by the court in its ruling.

None of these complaints constitutes a factual allegation that, if true, would raise a reasonable doubt as to Judge Roesch's impartiality. As to Plaintiff's first complaint, it is generally the litigant's role – not the Court's to specify evidence in support of in opposition to any given contention, including, e.g. the contentions of defendant Andronoico's Markets, Inc. (Defendant") in this proceeding that Plaintiff is a vexatious litigant (2) and that there is no reasonable probability that Plaintiff will prevail in this action.

As to Plaintiff's second complaint, if a party disagrees with the Court's ruling on the law and evidence presented by the litigants – even if the rulings are erroneous (3) and numerous and continuous – it is not a basis for a charge of bias or prejudice against that party. (McEwen V Occidential life ins. Co. (1916) 172 Cal.6,11 see also kreling V Superior V Superior Court 25 Cal.2d 305, 312.)

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2 As has been noted before in this proceeding, Plaintiff was determined to be a vexatious litigant by Order of this Court dated November 22, 1991, in Case No. C-687320. In May 1992 the Court of Appeal also determined in a Published opinion that Plaintiff was a vexatious litigant. (In Re Whitaker (1992) 6 Cal.App.4th 54).

The court also notes the opinion of the Supreme Court of the United States In Whitaker V Superior Court of California

San Francisco County (1995) 514 US 208. While not a vexatious litigant case, it is worthy of note in that therein the Supreme Court noted that Plaintiff is a prolific filer in this Court and not only refused to accept from him petitions for extraordinary relief in non-criminal matters (subject to certain exceptions), but also extended that sanction to a prohibition on the filing by Plaintiff of Writs of certiorari in non-criminal matters on account of his repetitious and frivolous requests. (514 Us at 209-210).

3 Interestingly plaintiff states in the challenge at p.2; A Judge's ruling is Presumed to be Correct. This Court's determination that Plaintiff is a vexatious litigant is based on other Judges previous ruling, which have not been overturned.

Regardless, two of Plaintiff's arguments regarding the Court's ruling warrant specific comment. Plaintiff asserts that the Court did not consider various factors that Plaintiff considers to be relevant to the amount of the security ordered pursuant to 391.1. However once the Court has found that Plaintiff is vexatious litigant, the vexatious litigant statutes did not require a hearing and evidence as to the amount of the undertaking that Plaintiff will be required to provide as security. (McColm V Westwood Park Ass'n (1998) 62 Cal.App.4th 1211.). Further in its ruling in this proceeding, the Court is presumed to have considered all matters submitted on the record. Plaintiff assertion to the contrary is not supported by admissible evidence, but rather is mere speculation, apparently based on the Court's declining to engage in colloquy to the extent desired by plaintiff.

Plaintiff also argues the Court erred by making rulings that, according to Plaintiff are contrary to tentative rulings

previously issued by another Judge in other cases (Challenge pp 10-11). Although Plaintiff has not indicated the dates of the tentative rulings in question, it appears that Plaintiff is referring to tentative ruling that were not adopted as orders of the Court. Such tentative ruling has no legal effect. It also bears mentioning that the tentative ruling raised by Plaintiff denied without prejudice vexatious litigant motions filed against Plaintiff, based on a determination that the moving parties had not met their burden to show that Plaintiff had no reasonable probability of prevailing on any portion of his case. In any event, except for matters that are to claim preclusions or issue preclusion (which Plaintiff does not raise) one trial court judge is not bound by another trial court judge's ruling in separate proceedings.

As to Plaintiff's third complaint, a review of the entire Challenge indicates that Plaintiff does not allege he was deprived of an opportunity to present written or oral argument. Indeed this complaint is not supported by any facts contained in Plaintiff's declaration in support of Challenge. (See Challenge pp 4-5.) Rather plaintiff argues that the Court's failure to specify the reasons for its ruling deprived him of an opportunity to respond to the Court's reasoning. This is simply a variation on Plaintiff's first complaint. Due process does not require the Court to engage in colloquy regarding the Court's reasoning. Furthermore, it would especially frustrate the policies of the vexatious litigant statutes if the Court were

required to engage in such colloquy with persons who have been determined to be vexatious litigants.

II. THE CHALLENGE IS UNTIMELY

The challenge must also be stricken for the additional reason that it is untimely. Section 170.3©(1) provides that a statement of disqualification shall be presented at the earliest practical opportunity after discovery of the facts constitutes the grounds for disqualification. A disqualification statement that is untimely filed may be stricken by the Judge against whom it is filed. Section 170.4(b)).

In this proceeding, plaintiff filed a previous challenge for cause on June 7, 2006. The previous challenge was stricken by order entered June 16, 2006. Plaintiff's complaints in the present Challenge are based on hearing taking place on May 26, 2006 (in a separate action, Whitaker V Gateway Supermarket case no. RG04181864), and September 5, 2006 (in this action). To the extent the Challenge is based on the May 26, 2006 hearing it is untimely.

III. THE CHALLENGE IS REPETITIVE

> "A party file no more than one statement of disqualification is first learned of or arises after the first statement of disqualification was filed. Repetitive statements of disqualification not alleging facts suggesting new grounds for disqualification shall be stricken by the judge against whom they are filed Section 170.4.(c)(3).
>
> Plaintiff's argument in the present Challenge is repetitive of the June 7, 2006 challenge. The previous

challenge was filed shortly after a May 26, 2006 hearing in Whitaker V Gateway Supermarket at which Judge Roesch granted a defendant's Motion to require Plaintiff to Furnish Security Pursuant to 391.1 and ordered plaintiff to post an undertaking in the amount of $ 25,000 no later than June 15, 2006. In the previous challenge, Plaintiff argued, inter alia, that the May 26, 2006 hearing was conducted in violation of his due process rights and that it was unconstitutional to apply the vexatious litigant statutes to him. Plaintiff's complaints in the current are not substantively new.

IV. CONCLUSION

In sum, the Challenge is substantively without and procedurally defective. As such that Plaintiff timely seeks a writ and an appellate court determines that an answer to the challenge should have been timely filed such an answer is submitted herewith for filing. See Fine V Superior Court 2002 97 Cal.App.4th 651, 658 fn.3).

IT IS SO ORDERED

DATED 10/19/06 _____

FRANK ROESCH

Judge of The Superior Courts

Verified Answer of Judge Roesch to Plaintiff's Challenge For Cause.

I Frank Roesch, declare as follows:

1. I am a sitting Judge of the Superior Court of the State of California in and for the County of Alameda and have been so since 2001.

2. On October 16, 2006 Plaintiff Fred A. Whitaker (plaintiff) filed a Motion For Disqualification (hereafter the Challenge) in Whitaker V Andronico's Markets (RG04181861) in which he seeks my disqualification pursuant to Code Civ. Proc. 170.3 by Order filed pursuant to Code Civ. Proc. 170.4(b) has untimely filed repetitive and for failure to disclose any legal ground for disqualification. However I am lodging this verified answer in the alternative in the event it is later found that the challenge does in fact disclose a legal basis for disqualification is timely and is not repetitive.

3. In this proceeding and in any other proceedings in which plaintiff has appeared before me; I have given plaintiff ample opportunity to present the merits of the matter before the Court at the time. To the extent I have ever limited Plaintiff during oral argument it was because I had already fully considered his arguments on the subject and determined them to be lacking in merit or because plaintiff sought to address matters not before the Court.

4. All of my ruling in this proceeding has been based on law and facts of which Plaintiff received proper notice (for example, in papers properly served and filed by Defendant Andronico's Markets, Inc.) and to which Plaintiff had ample opportunity to respond. Due process does not generally

require the Court to specify, or to engage in colloquy with litigant regarding, it's reasoning.

5. All of my ruling in his proceeding is based on a full review of the applicable law and all arguments and evidence presented by the parties. To the extent that Plaintiff seeks to disqualify me because he disagrees with my legal determinations – including my decisions not to overturn the vexatious litigant statutes as unconstitutional, that plaintiff is a vexatious litigant and that Plaintiff has no reasonable probability of prevailing on the merits in the abovementioned proceedings – the challenge is not meritorious McEwen V Occidental Life Ins. Co. (1916) 172 Cal.6, 11 see also Kreling V Superior Court (1944) 25 Cal.2d 305, 312.)

6. I deny that I have any bias or prejudices that would interfere with my ability to make rulings in this action according to proper law and procedures, or which would lead a person who is aware of all of the facts herein to reasonably certain a doubt my impartiality. I rule on each matter that comes before me based on the relevant facts and the applicable law.

7. I know of no facts or circumstances that would require my disqualification or recusal in this case.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that if called to testify, I could competently testify thereto.

Dated 10/19/06

_____

Frank Roesch
Judge of The Superior Court

Case No. RG04179104
Case Title Whitaker V Albertson Corporation

Reason On Calendar:
Motion For Security

Tentative Ruling:
This Tentative Ruling is issued By Judge Judith Ford

On the Motion of Defendant Albertson Co. ("Defendant") For Order Requiring Security Pursuant To CCP 391.1

1. The Court hereby STRIKES "Plaintiff's Opposition to Defendant's Reply to my first Opposition Documents" filed April 1, 2005. There is no provision in the Code of Civil Procedure or in the California Rules of Court for a sur-reply filing

2. The Motion of Defendant For Order Requiring Security Pursuant to CCP 391.1 is DENIED without prejudice, for the following reasons.

First the Court notes that Defendant has meet its burden on the first prong on 391.1 showing that plaintiff is and continues to be a vexatious litigant. This Court recently made a determination to the effect in its Order denying Motion To Remove Fred A. Whitaker from Judicial Council Vexatious Litigant List, issued April 6, 2005 in the case of Whitaker V. Andronico's Inc. Case No. RG04181861.

However Defendant also has the burden under the second prong of the statute of showing that there is not a reasonable probability that Plaintiff will prevail in the litigant

against the moving defendant. Defendant must show either that the plaintiff's recovery is foreclosed as a matter or that there are insufficient facts to support recovery by the plaintiff's legal theories. Devereaux V Latham & Watkins (1995) 32 Cal.App.4th 571. The Court need not credit the allegations of the plaintiff's complaint as true, but rather may exercise its discretion in evaluating the evidence presented by the parties. Morgan V Murtaugh, Miller, Meyer & Nelson (2205) 126 Cal.App.4th 323, 332.

In this action, based on the pleading and the evidence before the court, defendant has shown that Plainiff has no reasonable probability of prevailing on all but one of the causes of actions asserted. Defendant has not made such a showing as to the Third Cause of Action for Violation of Revenue and Taxation Code 6359.

In the third Cause of action, Action Plaintiff seeks restitution of sales tax amounts he claims were wrongly charged by defendant on the sales of products composed of milk products such as Ultra Slim Products, a weight loss product, and non-carbonated fruit juices such as Hawaiian Punch. Defendant has shown that Plaintiff has no reasonable probability of success as to this claim as it relates to the described milk- products , since such weight-loss products are not exempt from sales tax under Rev. & Tax Code 6359.

However, Defendants have presented no arguments, legal or factual, as to the third Cause of Action as it relates to juice products such as Hawaiian punch, which appears to fall under the exemption for food products as defined at Rev. & tax. Code 6359(B) (3)

Based on the above, at this time. Defendant has not made the showing required for the Court to order Plaintiff to furnish security under Code of Civil Pro. 391.1.

Case No. RG04179089
Case Title Whitaker V Safeway Corporation

Reason On Calendar:
Motion For Security

Tentative Ruling:
This Tentative Ruling is issued By Judge Judith Ford

On the Motion Of Defendant Safeway Co. ("Defendant") For Order Requiring Security Pursuant To CCP 391.1

1. The Court hereby STRIKES " Plaintiff's Opposition To Defendant's Reply to my first Opposition Documents" filed April 1, 2005. There is no provision in the Code of Civil Procedure or in the California Rules of Court for a sur-reply filing

2. The Motion of Defendant For Order Requiring Security Pursuant to CCP 391.1 is DENIED without prejudice, for the following reasons.

First the Court notes that Defendant has meet its burden on the first prong on 391.1 showing that plaintiff is and continues to be a vexatious litigant. This Court recently made a determination to the effect in its Order denying Motion To Remove Fred A. Whitaker from Judicial Council Vexatious Litigant List, issued April 6, 2005 in the case of

Whitaker V. Safeway Corporation Inc. Case No. RG04179089

However Defendant also has the burden under the second prong of the statute of showing that there is not a reasonable probability that Plaintiff will prevail in the litigant against the moving defendant. Defendant must show either that the plaintiff's recovery is foreclosed as a matter or that there are insufficient facts to support recovery by the plaintiff's legal theories. Devereaux V Latham & Watkins (1995) 32 Cal.App.4th 571. The Court need not credit the allegations of the plaintiff's complaint as true, but rather may exercise its discretion in evaluating th evidence presented by the parties , Morgan V Murtaugh, Miller, Meyer & Nelson (2205) 126 Cal.App.4th 323, 332.

In this action, based on the pleading and the evidence before the court, defendant has shown that Plainiff has no reasonable probability of prevailing on all but one of the causes of actions asserted. Defendant has not made such a showing as to the Third Cause of Action for Violation of Revenue and Taxation Code 6359.

In the third Cause of action, Action Plaintiff seeks restitution of sales tax amounts he claims were wrongly charged by defendant on the sales of products composed of milk products such as Ultra Slim Products, a weight loss product, and non-carbonated fruit juices such as Hawaiian Punch. Defendant has shown that Plaintiff has no reasonable probability of success as to this claim as it relates to the described milk- products , since such weight-loss products are not exempt from sales tax under Rev. & Tax Code 6359.

However , Defendants have presented no arguments, legal or factual, as to the third Cause of Action as it relates to juice products such as Hawaiian punch, which appears to fall under the exemption for food products as defined at Rev. & tax. Code 6359(B)(3)

Based on the above, at this time. Defendant has not made the showing required for the Court to order Plaintiff to furnish security under Code of Civil Pro. 391.1.

Case No. RG04179093
Case Title Whitaker V Smart & Final Corporation Inc.

Reason On Calendar:
Motion For Security

Tentative Ruling:
This Tentative Ruling is issued By Judge Judith Ford

On the Motion Of Defendant Albertson Co. ("Defendant") For Order Requiring Security Pursuant To CCP 391.1

1. The Court hereby STRIKES " Plaintiff's Opposition To Defendant's Reply to my first Opposition Documents" filed April 1, 2005. There is no provision in the Code of Civil Procedure or in the California Rules of Court for a sur-reply filing
2. The Motion of Defendant For Order Requiring Security Pursuant to CCP 391.1 is DENIED without prejudice, for the following reasons.

   First the Court notes that Defendant has meet its burden on the first prong on 391.1 showing that plaintiff is and continues to be a vexatious litigant. This Court recently made a determination to the effect in its Order denying Motion To Remove Fred A. Whitaker from Judicial Council Vexatious Litigant List, issued April 6, 2005 in the case of Whitaker V. Smart & Final Corporation . Case No. RG04179093

   However Defendant also has the burden under the second prong of the statute of showing that there is not a reasonable probability that Plaintiff will prevail in the litigant

against the moving defendant. Defendant must show either that the plaintiff's recovery is foreclosed as a matter or that there are insufficient facts to support recovery by the plaintiff's legal theories. Devereaux V Latham & Watkins (1995) 32 Cal.App.4th 571. The Court need not credit the allegations of the plaintiff's complaint as true, but rather may exercise its discretion in evaluating th evidence presented by the parties . Morgan V Murtaugh, Miller, Meyer & Nelson (2205) 126 Cal.App.4th 323, 332.

In this action, based on the pleading and the evidence before the court, defendant has shown that Plainiff has no reasonable probability of prevailing on all but one of the causes of actions asserted. Defendant has not made such a showing as to the Third Cause of Action for Violation of Revenue and Taxation Code 6359.

In the third Cause of action, Action Plaintiff seeks restitution of sales tax amounts he claims were wrongly charged by defendant on the sales of products composed of milk products such as Ultra Slim Products, a weight loss product, and non-carbonated fruit juices such as Hawaiian Punch. Defendant has shown that Plaintiff has no reasonable probability of success as to this claim as it relates to the described milk- products , since such weight-loss products are not exempt from sales tax under Rev. & Tax Code 6359.

However , Defendants have presented no arguments, legal or factual, as to the third Cause of Action as it relates to juice products such as Hawaiian punch, which appears to fall under the exemption for food products as defined at Rev. & tax. Code 6359(B)(3)

Based on the above, at this time. Defendant has not made the showing required for the Court to order Plaintiff to furnish security under Code of Civil Pro. 391.1.

Case No. RG04181844
Case Title Whitaker V Souza's Liquor & Deli

Reason On Calendar:
Motion For Security

Tentative Ruling:
This Tentative Ruling is issued By Judge Judith Ford

On the Motion Of Defendant Albertson Co. ("Defendant") For Order Requiring Security Pursuant To CCP 391.1

1. The Court hereby STRIKES " Plaintiff's Opposition To Defendant's Reply to my first Opposition Documents" filed April 1, 2005. There is no provision in the Code of Civil Procedure or in the California Rules of Court for a sur-reply filing

2. The Motion of Defendant For Order Requiring Security Pursuant to CCP 391.1 is DENIED without prejudice, for the following reasons.

First the Court notes that Defendant has meet its burden on the first prong on 391.1 showing that plaintiff is and continues to be a vexatious litigant. This Court recently made a determination to the effect in its Order denying Motion To Remove Fred A. Whitaker from Judicial Council Vexatious Litigant List, issued April 6, 2005 in the case of Whitaker V. Souz's Liquor & Deli Inc. Case No. RG04181844

However Defendant also has the burden under the second prong of the statute of showing that there is not a reasonable probability that Plaintiff will prevail in the litigant against the moving defendant. Defendant must show either that the plaintiff's recovery is foreclosed as a matter or that there are insufficient facts to support recovery by the plaintiff's legal theories. Devereaux V Latham & Watkins (1995) 32 Cal.App.4th 571. The Court need not credit the allegations of the plaintiff's complaint as true, but rather may exercise its discretion in evaluating th evidence presented by the parties . Morgan V Murtaugh, Miiler, Meyer & Nelson (2205) 126 Cal.App.4th 323, 332.

In this action, based on the pleading and the evidence before the court, defendant has shown that Plainiff has no reasonable probability of prevailing on all but one of the causes of actions asserted. Defendant has not made such a showing as to the Third Cause of Action for Violation of Revenue and Taxation Code 6359.

In the third Cause of action, Action Plaintiff seeks restitution of sales tax amounts he claims were wrongly charged by defendant on the sales of products composed of milk products such as Ultra Slim Products, a weight loss product, and non-carbonated fruit juices such as Hawaiian Punch. Defendant has shown that Plaintiff has no reasonable probability of success as to this claim as it relates to the described milk- products , since such weight-loss products are not exempt from sales tax under Rev. & Tax Code 6359.

However , Defendants have presented no arguments, legal or factual, as to the third Cause of Action as it relates to juice products such as Hawaiian punch, which appears to fall under the exemption for food products as defined at Rev. & tax. Code 6359(B)(3)

Based on the above, at this time. Defendant has not made the showing required for the Court to order Plaintiff to furnish security under Code of Civil Pro. 391.1.

FILED
MAY 17, 2005
CLERK OF THE SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

Fred A. Whitaker — No. RG04181861

Plaintiff — Order On Demurrer And Motion To Strike

vs

Andronico's Market, et al

Defendants

Two matters came on regularly for hearing on May 16, 2005 in Department 31 of this Court, The Honorable James A. Richman presiding; **(1)** Demurrer of Defendant Andronico's Markets Inc. ("Defendant") to complaint and **(2)** Motion of Defendant to strike portions of complaint.

The Court has considered all the papers filed on behalf of the parties and good cause appearing, HEREBY ORDERS as follows:

1. The demurrer to the first cause of action, for Violation of Revenue and Taxation Code 6359 is **SUSTAINED WITH LEAVE TO AMEND** for Plaintiff Fred A.

Whitak("Plaintiff") to allege if possible, all of the requisite elements necessary to state a claim under Business and Professions Code 17200 as amended by Proposition 64, based on a violation of the Revenue and Taxation Code. In this regard, the Court finds persuasive the decisions holding Proposition 64 to apply retroactively, such as Benson V Kwikset Corp. 2005 126 Cal.App.4th 887, Branick V Downey Saving and Loan Ass'n (2005).

2. **The Demurrer to the Second Cause of Action, for Violation of the Food Stamp Act is OVERRULED.**
3. The Demurrer to the Third Cause of Action, for Violation of Public Resources Code Section 14504, is SUSTAINED WITH LEAVE TO AMEND, for plaintiff to allege, if possible, all of the requisite elements necessary to state a claim under Business and Professions Code Section 17200, as amended by Proposition 64, based on a violation of the Public Resource Code.
4. The demurrer to the Fourth Cause of Action, for General Negligence **is OVERRULED**
5. The Demurrer to the Fifth Cause of Action, entitled "Complaint for money –common Count, the Demurrer is **SUSTAINED WITHOUT LEAVE TO AMEND**
6. The Demurrer to the sixth Cause of Action, for Conversion (mistakenly mislabeled as conversation) is **SUSTAINED WITHOUT LEAVE TO AMEND.**

7. The demurrer to the seventh Cause of Action entitled "Petition for Injunctive Relief is **OVERRULED.** Plaintiff has stated a cause of action for declaratory relief. (See Saunders V Cariss (1990) 224 Cal.App.3rd 905) [erroneous labels to be ignored if complaint pleads facts which would entitle plaintiff to relief].).
8. The Motion of Defendant to strike portions of complaint is **GRANTED** as to point 1 therein WITH LEAVE TO AMEND , for Plaintiff to allege, if possible, all of the requisite elements necessary to state a claim or claims under Business and Professions Code Section17200 as amended Proposition 64.

   The Court strikes from the first paragraph of the complaint the words "acting" as a private attorney General pursuant to Business and Professions Code Section 17200 and the words "and the general public" The remainder of the motion is denied.
9. Plaintiff shall have 10 days to amend, which shall run from the date of service of the Notice of entry of this order, which service shall be made by defendant.

DATE: May 17, 2005

_____

James A. Richman

Judge of The Superior Court

Filed
Alameda County
September 6, 2006

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

Fred A. Whitaker No. RG04181861

Plaintiff Order

Vs

Andronico's Markets

Defendant

The Motion of Defendant Andronico's Markets, Inc. came on for hearing on September 5, 2006 at 2:00pm in Department 31. Plaintiff Fred A. Whitaker appeared in pro per. Defendant Andronico's Markets Inc. appeared by William H. Curtis, Esq. of Foley McIntosh, Frey and Claytor. After careful consideration of the briefs, arguments of the parties and counsel and the pertinient authorities, and good cause appearing therefore, the Motion is GRANTED IN PART.

The Court finds that Plaintiff Fred A. Whitaker has been and is categorized as a vexatious litigant and there is no reasonable probability that Plaintiff will prevail in this action (See Code of Civil Procedure 391.1). Pursuant to Code of Civil Procedure 391.3 Plaintiff is ordered to furnish security in the amount of $ 25,000 by September 15, 2006.

DATE: 9/6/2006

_____

FRANK ROESCH
Judge of the Superior Court

Filed
Alameda County
June 13, 2006

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Fred A. Whitaker — No. RG04181864

Plaintiff — ORDER

Vs

Gateway Supermarket & Grazzali's
Supermarket Corporation

Defendants

On May 26, 2005 at 2:00pm in Dept. 31 of the above referenced Court, the Honorable Frank Roesch presiding a hearing was held on defendant's Grazzal's Supermarket Corporation's Motion To require Plaintiff Fred A. Whitaker to furnish security. Moving party and defendant Grazzali's Supermarket Coroporation was represented by William H. Curtis Esq. ; Plaintiff in pro per Fred A. Whitaker appeared on his own behalf.

The Court finds that plaintiff is a vexatious litigant and that there is no reasonable probability that Plaintiff Fred A. Whitaker will prevail in this action. Pursuant to Code of Civil Procedure Section 391.3, Plaintiff is ordered to furnish security iin the amount of $ 25,000 by June 15, 2006.

DATE: May 26, 2006 _____

FRANK ROESCH
Judge of The Superior Court

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Filed Court Of Appeal
First Appellate District
July 24 2006
Diana Herbert Clerk

Fred A. Whitaker
Petitioner

V

THE Superior Court Of Alameda County
Respondents

A114220

Alameda County Super Ct. No Nos.RG04181861,RG04181864

Andronico's Markets et al...
Real Parties in Interest

By The Court:

Fred A. Whitaker has previously been found to be a vexatious litigant and is subject to a prefiling order. On June 23, 2006, Mr Whitaker submitted an application for permission to file a writ petition challenging the trial court's June 16,2006 orders striking his challenges for cause.

The requests for permission to file a writ petition is denied. Mr. Whitaker has not shown a reasonable probability that his petition has merit (See Code Civ. Pro. # 391.7.).

Dated July 24 2006

MCGUINESS, **A.P.J.**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Filed Court Of Appeal
First Appellate District
Aug 18, 2006
Diana Herbert Clerk

Fred A. Whitaker
Petitioner

V

THE Superior Court Of Alameda County
Respondents

A114781

Alameda County Super Ct. No Nos. RG04181864

Gazzali's Supermarket Corp.
Real Parties in Interest

By The Court:

Fred A. Whitaker has previously been found to be a vexatious litigant and is subject to a prefiling order. On June 23, 2006, Mr Whitaker submitted an application for permission to file a writ petition challenging the trial court's June 14 ,2006 orders denying his motion for a new trial and denying his motion to set aside and vacate.

The requests for permission to file a writ petition is denied. Mr. Whitaker has not shown a reasonable probability that his petition has merit (See Code Civ. Pro. # 391.7.).

Dated Aug 18 2006

MCGUINESS, **A.P.J.**

Court of Appeal , First Appellate District Div. 1- A114220
S145545

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FRED A. WHITAKER Respondent

SUPERIOR COURT OF ALAMEDA COUNTY, Respondent

ANDRONICO'S MARKETS et al real Parties In Interest

Petition For Review DENIED

Supreme Court
FILED
Sept 13 2006
Frederick K. Ohlrich Clerk

_____
Deputy

GEORGE

_____
Chief Justice

Court of Appeal , First Appellate District Div. 1- A114781
S146058

IN THE SUPREME COURT OF CALIFORNIA

En Banc

FRED A. WHITAKER Petitioner

GAZZALIS SUPERMARKER CORPORATION ,
Real Party In Interest

SUPERIOR COURT OF ALAMEDA COUNTY
Respondent

Petition For Review DENIED

Corrigan J. was recused and
Did not participate

Supreme Court
FILED
Nov. 1 2006
Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

CCP 391: As used in this title, the following terms have the following meaning:

(A) " Litigation means any civil action or proceedings, commenced, maintained or pending in any state or federal court

(B) " **VEXATIOUS LITIGANT**" means a person who does any of the following:

(1) in the immediately preceding seven year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in small claims court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing

(2) after a litigation has been finally determined against the person, repeatedly relitigates or attempts to relitigate, in propria persona either (i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined or (ii) the cause of action, claim, controversy or any of the issues of fact of law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

California State Constitution Inalienable Rights Article 1 Section #1

Section 1.All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing and protecting property and pursuing and obtaining safety, happiness and privacy.

California State Constitution Due Process And Equal Protection Article 1 Section # 7

Secrion#7 (a) A person may not be deprived of life, liberty or property without due process of law or denied equal protection of the laws; provided, that nothing contained herein or otherwise in this constitution imposes upon the state of California or any public entity, board, or official any obligations or responsibilities which exceed those imposed by the Equal Protection Clause of The 14th Amendment to the United States Constitution with respect to the use of pupil school assignment or pupil transportation....

California State Constitution Superior Courts; Numnber of Judges; Article Six Section #4

Sec.4 In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the legislature may provide that one or more judges serve more than one superior court.

Federal Constitution Article 1 – Right To redress of Grievances

Article One – Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacefully to assemble and to petition the government for a redress of grievances.

Federal Constitution Article 14 Section 1

Section 1; All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizen of the United States and of the State wherein they reside. No State shall make or enforce any law which abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

PROOF OF SERVICE
CCP 1013(a) 2015 & 2003(3) & 2005(1)

I RACE C. JONES DECLARE;

I am over the age of 18 years and not party to this action. My residential address is 184 13th St. Apt. 114, Oakland, Ca. 94612 . On the date entered below I served the following document: **[1]** Writ of Certiorari

____X_____ BY MAIL CCP 1014 & 2015.5

I placed a true and correct copy of the above foregoing document(s) addressed to the following parties listed below on the attached service list, in a sealed envelop and placed the aforementioned document(s) with postage thereon fully prepaid to the address of **[1]** William, Curtis, Foiley, McIntosh, Frey, Claytor, 3675 Mt. Diablo Blvd. , Suite 250, Lafayette, Ca. 94549 **[2]** Attorney General Jerry Brown, Department of Justice, PO Box 924425, Sacramento, Ca. 94244-2550

_____A true copy of the aforementioned documents was transmitted via facsimile to the party listed:

___X ____ by personal service. I personally delivered the document(s) cited above to the following address: Attention **[3]** Judge Roesch, Superior Court, Alameda County, 1225 Fallon St. Appeals Section Room 109 Oakland, Ca. 94612 **[4]** California Supreme Court , 350 McAllister St. SF, Ca. 94104

I Race C. Jones declare under the penalty of perjury that the aforementioned statements are true and correct as executed in Oakland, California .

DATE: January 24 , 2007

Mr Race C. Jones

MR. RACE C. JONES